

**L.L., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Hughsonville, NY, Employer**

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### Case Submitted on the Record

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On December 6, 2013 appellant, through her attorney, filed a timely appeal from the Office of Workers' Compensation Programs' (OWCP) merit decision dated October 31, 2013 denying her recurrence claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

The issue is whether appellant established a recurrence of total disability beginning July 23, 2012 causally related to her July 11, 2012 employment injury.

This case has previously been before the Board. In an April 22, 2013 decision, the Board affirmed an October 24, 2012 OWCP decision which found that appellant failed to establish a recurrence of disability on or after July 23, 2012 causally related to her July 11, 2012 employment injury.<sup>1</sup> OWCP found that the medical evidence of record was unsupported by

<sup>1</sup> Docket No. 13-326 (issued April 22, 2013).

sufficient medical rationale or reasoning which explained why the claimed disability beginning July 23, 2012 was caused or aggravated by the accepted neck sprain. The Board noted that it did not accept that her torticollis condition or chronic spinal pain was causally related to the July 11, 2012 work injury. The facts of the previous Board decision are incorporated herein by reference.<sup>2</sup>

In an August 19, 2013 letter, appellant, through her attorney, requested reconsideration. In her reconsideration request, she contended that OWCP's characterization of her condition as simple neck sprain minimized the degree and severity of her work-related condition and resulted in the denial of the recurrence of symptoms of a condition far more serious than that originally accepted (*i.e.*, torticollis). Appellant stated that, from the time of the original injury through July 23, 2012, she experienced progressively worsening pain in the neck, shoulders and lower back such that she could not continue working. Evidence received in support of her reconsideration request included magnetic resonance imaging (MRI) scans of the cervical spine dated October 13, 2012 and April 22, 2013 and a July 9, 2013 report from Dr. Riccardo J. Esposito, a Board-certified family practitioner.

In his July 9, 2013 report, Dr. Esposito provided a history of the July 11, 2012 work injury. He stated that his initial examination and diagnosis was cervical strain with left upper extremity spasm and appellant was given off-work notes, muscle relaxers and pain medicine and referred to physical therapy. When appellant was next seen on July 27, 2012, Dr. Esposito noted that she stated that she was unable to get into physical therapy and that her condition had worsened and she could not turn her head left more than 10 degrees from midline without significant pain and spasm and that her pain now seemed to go down the back of her spine as well as her left arm and neck. He stated that the examination was consistent with more spasm and increased pain with less movement than the initial examination. Dr. Esposito opined that this worsening of appellant's condition noted on July 27, 2012 was directly related to the initial injury of July 11, 2012. He noted her complaints and symptoms and his clinical impressions on follow-up visits from August 2, 2012 through June 26, 2013, noting that her examination was unchanged. Dr. Esposito stated "in summary [appellant] suffered a workers' compensation injury on July 11, 2012, which recurred on July 23, 2012 causing her not to be able to work until the present time. In my opinion these injuries are related and to this point have not improved with multiple conservative treatments and a trigger point injection." Dr. Esposito noted that appellant continues to be followed for what appears to be a "permanent" injury that has caused her not to work because of her continued neck and back pain and the particular pattern of her pain down her left arm causing parenthesis, weakness and secondary insomnia. He opined that she has reached maximum medical improvement and cannot work in any capacity.

Evidence of record received prior to and subsequent to the request for reconsideration included: November 8, 2012 nerve conduction velocity (NCV) and electromyogram (EMG)

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<sup>2</sup> On July 11, 2012 appellant, then a 46-year-old officer-in-charge, acting postmaster, filed a traumatic injury claim for neck and left shoulder pain from opening a business window. She did not immediately stop work. OWCP accepted the claim for neck sprain and paid appropriate benefits. Appellant stopped work on July 23, 2012 and filed a recurrence of disability claim commencing July 23, 2012. She was advised by OWCP, in its September 5, 2012 acceptance letter and its September 5, 2012 letter regarding her recurrence claim, of the type of medical evidence needed to support her claim as to how the July 11, 2012 employment incident caused or aggravated torticollis.

studies and results; April 22, 2013 MRI scan of the cervical spine; June 12, 2013 diagnostic testing; an April 22, 2013 report from Dr. Samant Virk<sup>3</sup> diagnosing neck pain, cervical radiculopathy and cervical spondylosis along with operative reports of cervical translaminar epidural steroid injections at C6-7 level; a May 6, 2013 report from a nurse practitioner signed by Dr. Richard Dentico, a Board-certified physiatrist, containing an impression of chronic neck pain, bilateral shoulder trapezius pain, cervical spondylosis and likely myofascial pain syndrome; a June 10, 2013 report from a nurse practitioner; and a fitness-for-duty note dated August 30, 2013.

Additional evidence from Dr. Esposito included progress reports and out-of-work notes from April 22 through September 27, 2013 indicating that appellant was experiencing increased pain; and a July 14, 2013 work capacity evaluation. In a July 11, 2013 attending physician's report, Dr. Esposito opined that appellant's C5-6 herniated nucleus pulposus with radicular pain and decreased range of motion was caused by the work injury as she had no prior problems before the accident.

By decision dated October 31, 2013, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition resulting from a previous injury or illness without an intervening cause or a new exposure to the work environment that caused the illness.<sup>4</sup>

An employee who claims a recurrence of disability due to an accepted employment injury has the burden of proof to establish by the weight of substantial, reliable and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.<sup>5</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>6</sup> While the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, it must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.<sup>7</sup>

The term disability as used in FECA means the incapacity because of an employment injury to earn the wages that the employee was receiving at the time of injury.<sup>8</sup> For each period

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<sup>3</sup> Dr. Virk's credentials are not of record.

<sup>4</sup> *J.F.*, 58 ECAB 124 (2006); 20 C.F.R. § 10.5(x).

<sup>5</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>6</sup> *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

<sup>7</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>8</sup> *Paul E. Thams*, 56 ECAB 503 (2005).

of disability claimed, the employee has the burden of establishing that he or she was disabled for work as a result of the accepted employment injury.<sup>9</sup> Whether a particular injury caused an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>10</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>11</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify their disability and entitlement to compensation.<sup>12</sup>

Generally, findings on examination are needed to justify a physician's opinion that an employee is disabled for work.<sup>13</sup> Appellant's burden of proving that she was disabled on particular dates requires that she furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with medical reasoning.<sup>14</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>15</sup>

### ANALYSIS

OWCP accepted that appellant sustained a neck strain in the performance of duty on July 11, 2012. It did not accept that her torticollis condition or chronic spinal pain was causally related to the July 11, 2012 employment incident. Appellant stopped work on July 23, 2012 and claimed a recurrence of total disability due to the accepted injury on July 11, 2012.

The Board finds that appellant has not submitted medical evidence that is sufficient to establish a recurrence of disability related to her accepted injury of July 11, 2012. The Board's previous decision found that the evidence of record was not sufficient to establish a recurrence.<sup>16</sup> Appellant submitted additional reports by Dr. Esposito. In a July 11, 2013 attending physician's report, Dr. Esposito opined that her C5-6 herniated nucleus pulposus with radicular pain and decreased range of motion was caused by the work injury as she had no prior problems before the accident. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revealing an underlying condition does not establish

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<sup>9</sup> *Sandra D. Pruitt*, 57 ECAB 126 (2005); *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>10</sup> *G.T.*, 59 ECAB 447 (2008); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>11</sup> *D.I.*, 59 ECAB 158 (2007).

<sup>12</sup> *Amelia S. Jefferson*, 57 ECAB 183 (2005); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>13</sup> *S.F.*, 59 ECAB 525 (2008).

<sup>14</sup> *Ronald A. Eldridge*, 53 ECAB 218 (2001).

<sup>15</sup> *Mary A. Ceglia*, 55 ECAB 626 (2004).

<sup>16</sup> *See supra* note 1.

a causal relationship between her condition and her employment factors.<sup>17</sup> Dr. Esposito did not explain how a herniated disc developed due to appellant's employment factors or the July 11, 2012 work incident. Furthermore, it is well established that an opinion that a condition is causally related to federal employment because the employee previously was asymptomatic is insufficient, without supporting medical rationale, to establish causal relationship.<sup>18</sup> Dr. Esposito did not provide an adequate explanation as to how specific job duties contributed to a diagnosed condition. The Board further notes that the case was accepted for neck strain, not herniated disc at C5-6. Appellant has the burden of proof to establish causal relationship between the conditions not accepted by OWCP and the July 11, 2012 employment injury.<sup>19</sup>

In his July 9, 2013 report, Dr. Esposito opined that the worsening of appellant's condition on July 27, 2012 was directly related to the July 11, 2012 employment injury. He further stated that the recurrence on July 23, 2012 caused her not to be able to work until the present time. However, Dr. Esposito failed to explain with sound medical reasoning and objective tests how disability beginning July 23, 2012 was connected to the July 11, 2012 injury. His progress reports and out-of-work notes from April 22 through September 27, 2013 just indicate that appellant was experiencing increased pain. Pain, however, is a symptom, not a condition. Dr. Esposito did not address recurrence of disability beginning July 23, 2012 and thus his reports are of limited probative value on the matter.

The April 22, 2013 report from Dr. Virk diagnosing neck pain, cervical radiculopathy and cervical spondylosis and the May 6, 2013 report from Dr. Dentico, providing impressions of chronic neck pain, bilateral shoulder trapezius pain, cervical spondylosis and myofascial pain syndrome, fail to address whether the July 11, 2012 employment injury caused or aggravated the diagnosed conditions. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>20</sup> As previously noted, OWCP accepted only a neck strain in this case. Appellant has the burden of proof to establish causal relationship between the conditions not accepted by OWCP and the July 11, 2012 employment injury.<sup>21</sup>

Nurse practitioner reports of record do not constitute probative medical evidence, as nurse practitioners do not qualify as physicians under FECA.<sup>22</sup> The diagnostic testing of record, which do not contain an opinion as to the cause of appellant's condition, also do not address recurrence of disability and thus, offer, limited probative value on the matter.<sup>23</sup>

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<sup>17</sup> *P.G.*, Docket No. 12-905 (issued December 12, 2012); *see also Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>18</sup> *Michael S. Mina*, 57 ECAB 379 (2006); *Kimper Lee*, 45 ECAB 565 (1994); *Thomas D. Petrylak*, 39 ECAB 276 (1987).

<sup>19</sup> *See JaJa K. Asaramo*, 55 ECAB 104 (2004).

<sup>20</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>21</sup> *See supra* note 18.

<sup>22</sup> 5 U.S.C. § 8101(2).

<sup>23</sup> *See Mary E. Marshall*, 56 ECAB 420 (2005).

In summary, the medical evidence of record is unsupported by rationalized medical evidence which demonstrates that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury or which explains the nature of relationship between appellant's current conditions and her accepted injury.<sup>24</sup>

On appeal, appellant contends that her July 11, 2012 injury intensified until she lost almost full mobility of her neck. She argues that the factual and medical basis of her recurrence has been established. However, for the reasons set forth above, appellant has not established either the claimed recurrence or that her current conditions are due to her accepted injury.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant failed to establish a recurrence of disability on or after July 23, 2012 causally related to her July 11, 2012 employment injury.

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<sup>24</sup> A.M., Docket No. 09-1895 (issued April 23, 2010) (when a claimant stops work for reasons unrelated to the accepted employment injury, there is no disability within the meaning of FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated October 31, 2013 is affirmed.

Issued: June 3, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board